For instance illustration (m), upon which the learned Magistrate relied, opens with the words "A., being on friendly terms with Z." There must be evidence of such friendly relationship. Here there was no such evidence at all.

In point of fact, in order to save time and delay which would have happened if I had ordered a retrial, and with the consent of the learned Deputy and of the Respondent, I recorded the evidence of the Respondent. He corroborated Voon Yuk in every detail but admitted that he did not know the complainant at all. In view of this evidence I do not see how illustration (m) can apply.

As regards the cases cited by the learned Magistrate, namely, *Rup Lal v. Durga Prasad* reported in A.I.R. Patna, 1917, page 459, and *Nabi Baksh v. Queen Empress*, 25 Calcutta 416, they all showed that the whole of the evidence, both for the prosecution and the defence, was before the Court from which it made findings of fact and then of law.

For these reasons the learned Magistrate was wrong in stopping the case at the stage that he did. He should have called on the defence and then come to the conclusions on the whole of the evidence.

I fully endorse the statement of the learned Magistrate that the Court should be slow to convict in cases of theft which amount only to a technical breach of the section because of the stigma of a conviction.

I would however point out to the learned Magistrate the provisions of section 173A (ii) of the Criminal Procedure Code. That section is intended to cover such cases as the learned Magistrate had in mind. The Magistrate, if he considers it expedient, need not record a conviction.

In point of fact this is exactly what I did and I cautioned and discharged the Respondent.

Respondent cautioned and discharged.

[APPELLATE CRIMINAL JURISDICTION]

GORDON-SMITH, J.

April 1, 1939.

VAN LANGENBERG v. PUBLIC PROSECUTOR.

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 7 of 1939]

Sanitary Boards Enactment (Cap. 137), Section 16 (i)—By-laws made thereunder.

The appellant, who was an architect, carrying on business in Kuala Lumpur, put up on Lot 16 Sec. 88 a hoarding affixed to a post about 5 feet high facing Ampang Street. The hoarding was a board on which were inscribed the words "Architects, T.C. Van Langenberg & Son, L.R.I.B.A., F.I.A.A." A building was in the course of erection on the Lot in question which was within the Sanitary Board and was being erected under the supervision of the appellant and he was the architect thereof. He was convicted in the Magistrate's Court, Kuala Lumpur at the instance of the Kuala Lumpur Sanitary Board with having contravened By-law No. 2 of Part IX of the By-laws made under the Sanitary Boards Enactment and fined $2/-. The appellant appealed to the Supreme Court against the conviction on the grounds (1) that the By-laws were **ultra-vires** the Enactment and therefore invalid and (2) that the Sanitary Board had no power to license sign boards or advertisements.

Held, that, as there was nothing unreasonable in the By-laws in question, and as they did not appear to be either in excess of the Statutory powers authorising them or repugnant to the Statute under which they were made or to the general principles of law, they were not **ultra vires** the Sanitary Boards Enactment and were therefore valid.

Held further, that the Sanitary Board had power to license sign boards or advertisements.

MAGISTRATE'S CRIMINAL APPEAL.

J. F. Draper, Deputy Public Prosecutor, for the Public Prosecutor.

Appellant in person.

Cur. Adv. Vult.

Gordon-Smith, J.—In this case the Appellant has been convicted in the Magistrate's Court, Kuala Lumpur, at the instance of the Kuala Lumpur Sanitary Board in that he had contravened By-law No. 2 of Part IX of the By-laws made under the Sanitary Boards Enactment Cap. 137. He was fined $2/-.

From this conviction he has appealed on the grounds that the Magistrate erred in law in that—

(a) the By-laws were *ultra vires* the Enactment and therefore invalid;

(b) the Sanitary Board had no power to license signboards or advertisements.

On ground (a) the Appellant argued and submitted that Part IX of the By-laws was *ultra vires* the Enactment on the grounds that they were unreasonable and impossible of application, and he dealt *seriatim* with such By-laws and the fees payable under By-law 8.

On ground (b) he submitted that the Board had no power to license but only to regulate and restrict and no power to charge fees for signboards or hoardings.

The facts were undisputed and were, briefly, to the effect that the Appellant, who is an architect, carrying on business in Kuala Lumpur, put on lot 16,

sec. 88 a hoarding, about 2½ ft. x 1 ft. affixed to a post about 5 ft. high facing Ampang Street. The hoarding, in effect, was a board on which were the words "Architects, T. C. Van Langenberg & Son, L.R.I.B.A., F.I.A.A."

I understand that a building was in course of erection on the lot in question, which is within the Sanitary Board area, and which building was being erected under the supervision of the Appellant and of which he was the architect.

The By-laws in question were made under the authority of Section 16 (i) of the Enactment which authorises the making of By-laws for any purpose described in Section 15 and also provides "for the payment of reasonable fees for such registration, licensing or otherwise as may be required for the purposes of this Enactment."

Paragraph K of Section 5 (i), one of the matters referred to in Section 16, reads "the regulations, restriction or prevention of the exhibition of advertisements."

The By-laws prescribed under this authority for Kuala Lumpur appear in Gazette Notification 3797/35 and Part IX is the relevant Part dealing with the exhibition of advertisements.

The heading, or preamble, to this Part (and which the Appellant appears to have overlooked when arguing the matter) reads as follows:—

> "By-laws for the control of advertisements displayed on or by means of hoardings, signboards or sky-signs."

By-law 1 then defines hoardings, signboards and sky-signs respectively, but such definitions are not specific or limited. In respect of a hoarding "it includes" a wall, fence, signboard, casing or other erection or contrivance or any tree on, or through which advertisements are or can be displayed. In respect of a signboard it specifically "means a hoarding fixed to a house for the purpose of advertising the name of a person or firm carrying on any trade or business within such house or the nature of the trade or business so carried ."

It will be seen, therefore, that although a hoarding includes a signboard yet there is a distinction between the two. To become a signboard, the hoarding must be affixed to a house and must be for a particular purpose.

Under By-law 2, hoardings and sky-signs used for the purposes of exhibiting advertisements must be licensed.

Under By-law 7 signboards not projecting over a street are exempt from having to be licensed.

By-law 8 prescribes the fees payable and, subject to a minimum, are on a graduated scale according to the surface size of the advertisement displayed.

Rules (which include By-laws) made under statutory powers enforceable by penalties must be construed like other provisions encroaching on the rights of persons. They must, on pain of invalidity, be—

(a) not unreasonable,

(b) not in excess of the statutory power authorising them,

(c) not repugnant to that statute or

(d) to the general principles of law.

In this connection also I would refer to my own judgment in *Rex v. Leong Ah Chan and others,* (1936) M.L.J. at page 38 where I dealt somewhat exhaustively with these four propositions, and quoted various cases, including that of *Kruse v. Johnson,* (1898) 2 Q.B. 91, quoted by the Appellant.

Although perhaps the By-laws in this Part IX might have been more happily framed and expressed, I can see nothing unreasonable in these particular By-laws, nor do they appear to me to be either in excess of the statutory powers authorising them or repugnant to that statute or general principles. Nor do the fees charged under By-law 8 appear to be unreasonable. Because an advertisement may appear on a wall, it does not follow that there is chargeable an additional fee of $1/- for every square yard of such wall throughout its length and breadth—but it is the surface area of the wall that is covered by the advertisement in question that is estimated. Similarly with regard to a tree, paling or fence.

As to the second ground of appeal, i.e. that the Board has no power to license signboards or advertisements. Unless you are going to prohibit advertising altogether how can you regulate or restrict it without licence or permission? Admittedly, the word licence or permit is not specifically used in paragraph K of section 15 (i) of the Enactment whereas it is used elsewhere in the section (e.g. paragraph (c)). But where a substantive enactment confers a jurisdiction it impliedly grants the power of doing all such acts or

employing such means as are essentially necessary for its execution. Section 16 (i) specifically provides for the payment of fees for registration, licensing or otherwise (and one can include regulation or restriction in this phrase) in respect of any of the matters referred to in section 15. Here you get specific authority for the payment of fees in connection with the regulation or restriction of advertising and it matters not whether the fee is payable on the face of the licence or not. By-law 2 prohibits the use of advertisement hoardings or signboards without the licence in writing of the Chairman, and subject to the exemption contained in By-law 7. How else are such matters to be regulated except by licence? There is nothing unreasonable in this By-law.

For the reasons given, I think the Magistrate was right in convicting the accused of the offence charged and the appeal is therefore dismissed.

Appeal dismissed.

[APPELLATE CIVIL JURISDICTION]

POYSER, C.J., McELWAINE, C.J. (S.S.) AND GORDON-SMITH, Ag. J.A.

July 6, 1939.

GAN HONG HOE v. GAN KIM HEE.

[NEGRI SEMBILAN CIVIL APPEAL No. 5 of 1938]

Bankruptcy—capacity of undischarged bankrupt to contract—whether action maintainable against bankrupt on a post bankruptcy contract.

There is nothing in the Bankruptcy Enactment (Cap. 55) which would preclude a creditor from maintaining an action on a contract entered into by him with the debtor after the debtor has been adjudged bankrupt.

CIVIL APPEAL.

Jeff for the Appellant.

Rintoul for the Respondent.

Cur. Adv. Vult.

McElwaine, C.J. (S.S.)—The plaintiff brought an action against the respondent and three others for goods sold and delivered alleging that all four defendants were carrying on business in partnership.

The second defendant filed a defence denying that he was a partner. He also pleaded that he was an undischarged bankrupt.

At the trial it appeared that the respondent was a bankrupt at the date of the issue of the plaint but had obtained his discharge subject to a judgment, by the time the case came for trial.

The debt in respect of which the respondent was sued was contracted after the receiving and adjudication orders had been made against him.

The learned trial judge held that the action was not maintainable against the second defendant, his reasons for so holding were as follows "in my view this section (section 47 of the Bankruptcy Enactment) protects any transaction entered into before the receiving order and invalidates any contract entered into after the date of the receiving order".

I do not understand this section to invalidate anything. What it does do is to declare that certain transactions are not invalidated. Section 47 is one of a group of sections dealing with "effect of Bankruptcy on antecedent transactions". It provides as the marginal note says, for the protection of certain *bona fide* transactions. Clauses (a) (b) (c) (d) are the kind of transactions that can be protected and the two provisos set out what is a requisite stamp of *bona fides*.

In my opinion this section has no bearing on the alleged contract in this case. It would have a bearing in the event of a second bankruptcy after the date of this alleged contract.

The section does not enact that a bankrupt is incapable of making a contract and that is what I understand the argument of the respondent to be.

Section 9 (1) protects the bankrupt against actions for debts provable in bankruptcy. The intention is not to deprive creditors of all their rights but to put them all on an equal footing and to prevent dissipation of assets. The creditor may not sue because he can prove in the bankruptcy. Of course, leave of the Court can be given to sue on terms but nothing in this case turns on this power of the Court. This section 9 relates to causes of action accrued before the receiving order, not to debts which do not become provable until after the receiving order, and consequently could not be proved in the bankruptcy.

I am confirmed in this view by section 30 (iii):

> "An order of discharge shall release the bankrupt from all other debts provable in bankruptcy".

Debts accrued after bankruptcy are not provable in that bankruptcy and are not released by discharge from a prior bankruptcy.

So far as material to this case the Bankruptcy Enactment is the same as the English Bankruptcy Act 1883 and *Cohen v. Mitchell* 25 Q.B.D. 262 which established that a bankrupt can contract is applicable in the Federated Malay States.